

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

PRADACAKESS

Plaintiff

v.

ROACHINTHESHOWER

Defendant

Case No. 4:24-cv-0170/QWT

**MEMORANDUM OPINION AND ORDER ON MOTION TO DISMISS
FOR FAILURE TO PROSECUTE OR FOR MOOTNESS**

Mama G. Obies, *Esq.*, United States Solicitor General, and Karl L. Schultz, *Esq.*, Assistant United States Attorney, for the United States.

Alexander J. Cabot, *Esq.*, for the defendant.

MrSlogMan, *Esq.*, Deputy Attorney General for the District of Columbia; Joshua Miller, *Esq.*, Group Manager and Former President of the United States; LikeableDalton2000, *Esq.*, attorney-at-law; Chrisiful, *Esq.*, attorney-at-law; *amici curiae*.

QWERTY, Chief Judge, U.S. District Court for the District of Columbia:

Plaintiff brought suit alleging battery and assault committed by the defendant. During the pendency of this action, the Plaintiff found himself removed (“banned”) from these United States by Group Management. Defendant moves to dismiss this action.

The defendant urges dismissal as this case is moot. The mootness doctrine means that a Court lacks the power to proceed on a case “when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome.” *Row 1 Inc. v. Becerra*, 92

F.4th 1138, 1144 (D.C. Cir. 2024) (cleaned up). *See also Reid v. Hurwitz*, 920 F.3d 828, 832 (D.C. Cir. 2019) (“Under the mootness doctrine, we cannot decide a case if ‘events have so transpired that the decision will neither presently affect the parties’ rights nor have a more-than-speculative chance of affecting them in the future.’”) (quoting *Clarke v. United States*, 915 F.2d 699, 701 (D.C. Cir. 1990) (en banc)) (alterations in original). And as a matter of this Court’s jurisdiction, both on the defendant’s motion and upon this Court’s own, we have an obligation to ensure that a matter is not moot before proceeding any further.

The primary ground upon which the mootness argument is based appears to be that the plaintiff in the present action has been banned from these United States. But such a removal is not an *ipso facto* ground of mootness, *Maxonymous v. United States*, 4:23-cv-0018A/QWT (D.D.C. Nov. 27 2023)¹; *see also In re Kreigsherr*, —U.S.—, 16-09, at *3 (Adv. Op. Jan. 31 2024) (holding that involuntary removal in the form of a “ban” or “blacklist” does not deprive a person of citizenship). To be sure, where a ban is permanent, that alone may operate in certain—and perhaps many—circumstances such that this Court’s decision would “neither presently affect the parties’ rights nor have a more-than-speculative chance of affecting [plaintiff] in the future,” *Hardaway v. Dist. of Columbia Hous. Auth.*, 843 F.3d 973, 978 (D.C. Cir. 2016) (quoting *American Bar Association v. FTC*, 636 F.3d 641, 645 (D.C. Cir. 2011)), but that determination is sensitive to the facts and circumstances of each case, not the natural and indivisible consequence of removal.

¹ <https://archive.org/details/maxonymous-v.-us-dismissal/>

This Court will not take the difficult step of establishing whether or not plaintiff's case falls within that subset of cases which *are* mooted by a ban, however, since “courts may address certain nonjurisdictional, threshold issues before examining jurisdictional questions’ [and so] need not consider its subject-matter jurisdiction if it can dispose of the case on another non-merits ground.” *Khadr v. United States*, 67 F.4th 413, 418 (D.C. Cir. 2023) (quoting *Kaplan v. Cent. Bank of the Islamic Republic of Iran*, 896 F.3d 501, 513 (D.C. Cir. 2018)). *See also Sinochem Int’l Co. v. Malaysia Int’l Shipping Corp.*, 549 U.S. 422, 4321, 127 S.Ct. 1184, 167 L.Ed.2d 15 (2007) (explaining that a court need not address jurisdiction before other threshold issues when “convenience, fairness, and judicial economy so warrant.”).

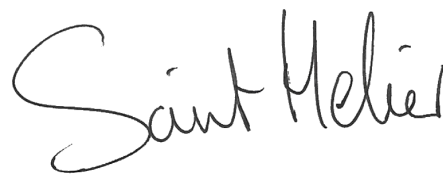
Here, of course, it is obvious that, as a practical matter, the Plaintiff has not prosecuted his case, for the uncontentious reason that he cannot do so at the present moment. However, because dismissal with prejudice is “ordinarily limited to cases involving egregious conduct by particularly dilatory plaintiffs, after less dire alternatives have been tried without success,” *Peterson v. Archstone Communities LLC*, 637 F.3d 416, 418 (D.C. Cir. 2011) (quoting *Noble v. U.S. Postal Serv.*, 71 Fed.Appx. 69, 69 (D.C. Cir. 2003)) (internal quotation marks omitted) (collecting cases), such dismissal is indeed not appropriate here. Whilst the Court notes that several courts have raised the tension between dismissal, even nominally without prejudice for failure to prosecute and the possible foreclosure of future litigation as a result of the statute of limitations, *see e.g. Cohen v. Bd. of Trs. of the Univ. of the Dist. of Columbia*, 819 F.3d 476 (D.C. Cir. 2016) (discussing cumulative effect of statute of limitations and dismissal for failure to prosecute, and appropriateness of such dismissal); *Morrissey v. Mayorkas*, 17 F.4th 1150, 1175-80 (D.C. Cir. 2021) (MILLETT, J., dissenting) (same),

that too does not appear entirely applicable here. Indeed, in many respects, a dismissal for failure to prosecute whilst a plaintiff is banned operates more like a stay than a complete dismissal of a claim—after all, Plaintiff is free to refile the case once he is able to return to the United States, and he may well be able to avail himself if applicable of the equitable tolling of his claim, as is not often the case with a dismissal for failure to prosecute. *See Menominee Indian Tribe of Wis. v. United States*, 764 F.3d 51, 54 (D.C. Cir. 2014) (holding that equitable tolling is available where “some extraordinary circumstance stood in [plaintiff’s] way and prevented timely filing.”) (quoting *Holland v. Florida*, 560 U.S. 631, 649, 130 S.Ct. 2549, 177 L.Ed.2d 130 (2010)) (internal quotation marks omitted).

* * * * *

The present action is **dismissed without prejudice** and the Clerk is directed to assign the action, if refiled, to the same judge.

This is a final order subject to rehearing or to a motion to vary or set aside. Fed. R. Civ. P. 60(b).

A handwritten signature in black ink, reading "Saint Melier". The signature is written in a cursive, flowing style. Below the signature is a solid horizontal line.

Newplayerqwerty, C.U.S.D.J.

Date: 25th July 2024